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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

BRIGHAM YOUNG UNIVERSITY, a Utah
Non-Profit Education Institution; and Dr.
DANIEL L. SIMMONS, an individual,

Plaintiffs,

vs.

PFIZER, INC., a Delaware corporation; G.D.
SEARLE & COMPANY, a Delaware
corporation; G.D. SEARLE LLC, a Delaware
limited liability company; MONSANTO
COMPANY, a Delaware corporation; and
PHARMACIA CORPORATION, a Delaware
corporation,

Defendants.

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION TO EXTEND TRIAL DATE**

Case Number: 2:06CV-890-BTS (BCW)

Judge Ted Stewart

Magistrate Judge Brooke C. Wells

After withholding documents for over 42 months, Pfizer now opposes BYU's request for a nine month extension to complete trial preparation; trial preparation that Pfizer's misconduct has delayed for more than three and a half years.

BYU's Motion to Extend Trial Date is based on the impossibilities of meeting the current schedule. Pfizer does not dispute that BYU's decision to wait to take depositions was based on this Court's 29 July 2008 admonition. Nor does Pfizer dispute that it has spent more than three years misrepresenting the status of its discovery.

Instead, Pfizer uses its Opposition to incorrectly portray the merits of this case in a further attempt to, now that Pfizer has delayed making a full production for more than three and a half years, even in light of this Court's 26 March 2008 Order, jam BYU with an abbreviated trial schedule.

Pfizer does not explain, other than suggesting that the parties cooperate, how the parties should schedule and take approximately 21 depositions in the next 41 business days. On 20 May 2010, BYU formally requested 17 depositions;¹ to date, Pfizer has only provided dates for four of them.

Nor does Pfizer explain how BYU's experts should draft their reports prior to all the depositions being completed. As BYU has described, it has not been complacent, but has diligently prosecuted its case, including by seeking a full production from Pfizer. BYU has also retained 10 expert witnesses and consultants. But without Pfizer's full production and the subsequent depositions, BYU's experts cannot complete their analysis or finalize their opinions.

And at the same time, Pfizer pretends it did not misrepresent the existence of the COX-2 Collection or that everything in the COX-2 Collection had been produced. In fact, Pfizer is still

¹ Ltr. from A. Anderson to L. Schneider, 20 May 10, Ex. 1.

withholding scientific notebooks referred to in the COX-2 Collection. For example, BYU found references in the Collection to 22 scientific notebooks that Pfizer had not produced.

On 28 May 2010, Pfizer finally produced two of them with claims that they are not relevant. Whether those notebooks are relevant, they were referenced in documents in the COX-2 Collection, and Pfizer had not produced them. BYU could not have known what the notebooks contained; BYU only knew that, if it had believed Pfizer earlier, BYU never would have found the COX-2 Collection or the Seibert file kept within that collection. Nor would BYU have found any of the other highly relevant documents discussed at great length in the memoranda leading up to this Court's sanctions order. Additionally, since Pfizer has never produced a log or index of notebooks it assigned, BYU cannot possibly know what notebooks contain what or to whom they were assigned.

Pfizer still has not produced the other 20 scientific notebooks that BYU has identified by number in the COX-2 Collection.

Pfizer should not be allowed to profit from its discovery misconduct. For the reasons described above and in Plaintiffs' Motion to Extend Trial Date—all of which show good cause—BYU respectfully requests that the Court amend the current schedule as follows:

Close of discovery	1 April 2011	BYU's pretrial disclosures	12 August 2011
Plaintiffs' expert reports	29 April 2011	Pfizer's pretrial disclosures	19 August 2011
Counter expert reports	13 May 2011	Settlement conference	16 September 2011
Close of expert discovery	10 June 2011	Pretrial conference	22 September 2011
Dispositive motions	24 June 2011	Trial	26 September 2011

RESPECTFULLY SUBMITTED this 2nd day of June 2010.

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By s/ Adam C. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2010, I electronically filed the foregoing Reply in Support of Motion to Extend Trial Date with the Clerk of the United States District, District of Utah Central Division, using the CM/ECF system which sent notification of such filing to the following:

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s/ Adam C. Anderson